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**The Legal Status Of
Labour Migrants In The
Russian Federation: Actual
Problems Of Counteracting
Illegal Involvement In
Labour With Reduced
Compensation**



**THE LEGAL STATUS OF LABOUR MIGRANTS IN THE RUSSIAN FEDERATION:
ACTUAL PROBLEMS OF COUNTERACTING ILLEGAL INVOLVEMENT IN LABOUR
WITH REDUCED COMPENSATION**

**LA SITUACIÓN JURÍDICA DE LOS MIGRANTES LABORALES EN LA FEDERACIÓN
RUSA: PROBLEMAS REALES PARA CONTRARRESTAR LA PARTICIPACIÓN
ILEGAL EN EL TRABAJO CON UNA REMUNERACIÓN REDUCIDA**

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Fecha de recibido: 2019-12-22

Fecha de aceptado para publicación: 2019-12-29

Fecha de publicación: 2019-12-30

Abstract

The article considers some of the problems of labour migration legislation; the solutions to the problems are provided. Emphasis is placed to the need of crime prevention in the sphere of labour migration.

Keywords: migrant, crime in the sphere of migration, labour migration, employment, mobility of labor resources, refugee.

Resumen

El artículo considera algunos de los problemas de la legislación sobre migración laboral; Se proporcionan las soluciones a los problemas. Se hace hincapié en la necesidad de la prevención del delito en el ámbito de la migración laboral.

Palabras clave: migrante, delincuencia en el ámbito de la migración, migración laboral, empleo, movilidad de recursos laborales, refugiados.

Introduction

The relevance of the study is determined by the need to consider the successful experience of law enforcement of domestic migration legislation in the field of labour migration. In addition, there is no doubt that the regulation of legal relations between migrant workers and the indigenous population, state and local authorities should be understood from a scientific standpoint. It is also important to understand the impact of labour migration on individuals and society.

The special relevance of the study lies in the fact that the reform of the law enforcement system in our country continues, including combating illegal migration of workers, in which they are victims of labour exploitation and at the same time can become subjects of violence, pose a threat to society and the state as a whole and to the safety of



individual citizens. Illegal labour migration negatively affects both the state of law and order and the political, economic and social spheres of public life.

Our state is among the first in the number of arriving migrants. It is clear that the economic development of the country, the standard of living of its population, participation in the division of labor in the world market and even political stability and integrity of the territory depend on how migration processes will be formed, what direction they will take.

All this allows us to conclude that the research topic is very relevant and significant, both in theory and in practice, for the development of measures for the development of legal regulation of labour migration, the development of interaction between government institutions and civil society, aimed at countering the formation and spread of socially negative practices, one of which is illegal employment with reduced compensation.

Methodology

The study is based on the methods of formal logic such as description method, comparison method, analysis and synthesis, classification, and other techniques that allowed to characterize the models of legal regulation of migration of workers in our country with its specific normative content. In addition, thanks to the use of these research methods, the proposed article was able to examine the migration legislation for compliance with its model under study, as well as to see some shortcomings in the regulation of the migration sphere and suggest ways to eliminate them.

The article has used a formal legal method, as well as a comparative legal one in order to correlate different rules of law and offer a legal concept that does not contain internal contradictions.

The study has also used separate sociological (such as extrapolation and modeling) and statistical methods of cognition (for example, correlation, classification) in order to identify the patterns and main trends in determining the main contradictions and measures to overcome them.

The use of these methods has made it possible to study the objects in question in their integrity, interaction, to study them objectively, to identify the main trends and draw conclusions and generalizations.

Traditionally, population migration is divided into forced migration and labour migration (or otherwise – voluntary). Forced migration, unlike voluntary migration, occurs because of persecution, human rights violations or other negative factors (fighting, environmental disasters, etc.). As for labour migration, it usually occurs for economic reasons and at the will of the migrants themselves.

Labour migration is usually considered in two aspects, namely: internal labour migration and international labour migration. Internal migration is characterized by the fact that such migration is carried out by citizens of a particular state within its territory in order to find the most suitable work. And international labour migration is associated with the entry of foreign nationals into the country for a certain period in order to obtain the best working conditions in the country of entry.

The reasons for migration of workers can be very different. Thus, poverty, the inability of migrants to earn or produce enough to support themselves and their families in



their country are often cited as the main reasons for people moving from one country to another in search of suitable work. The same reasons are typical for the internal migration of workers, but in a less pronounced form.

Legal relations are regulated by the norms of international labour law in the sphere of international migration of workers. In its turn, the legal relations of internal migration are regulated by internal labour and administrative legislation.

In Russia, the legislation regulating the General legal and labour status of foreign citizens has been improved. The procedure for entry of foreign workers into the Russian territory is regulated by the provisions of Federal Law № 115-FL of 25.07.2002 "on the legal status of foreign citizens in the Russian Federation" and Federal Law № 109-FL of 18.07.2006 "on migration registration of foreign citizens and stateless persons in the Russian Federation" and other regulatory acts.

Bekyashev D. K., Ivanov D. V. International legal regulation of forced and labor migration: Monograph. Moscow: Prospect, 2013. Pp. 392.

Actions on the organization of illegal entry into Russia of foreign citizens and their illegal stay in its territory or illegal transit through its territory are qualified, according to the Article 322.1 of the Criminal code of the Russian Federation, as the organization of illegal migration and is forbidden by the criminal law. Punishment for such actions is established in the form of imprisonment for a term up to five years with restriction of freedom up to two years or without it, and at the qualified structure-in the form of imprisonment for a term up to seven years with a fine and restriction of freedom up to two years or without those.

Migrant workers are united by the fact that all of them are subjects of labour relations, they are interested in working with a specific employer and have the right to dispose of their work independently. But at the same time, it must be recognized that the situation of foreign workers is different. The issues of their employment and the procedure for employment are regulated by various regulations. Today there is no single legislative act, which would contain rules governing all migration processes of workers. We believe that the development and adoption of such a legislative act is necessary, since it is necessary at the legislative level to establish normative definitions reflecting the content of various types of labor migration. Such legislation should include definitions that today, in our opinion, are unreasonably identified, as well as for which there is ambiguity due to the lack of official explanations.

In this matter, we should agree with the point of view of E.P. Budalin, who believes that migration, which today has a global character, forces the state to attend to the elimination of existing contradictions between international and national legislation, which can be done by adopting a single codified act-the Migration code 2.

The improvement of International and domestic legal regulation of labour migration is one of the main directions of the state's activities to counteract the illegal attraction of migrants to work with reduced compensation. In the absence of proper legal regulation of the status of migrant workers and the order of relations with employers and public authorities, the situation of migrants is steadily deteriorating. The legislation needs to be amended to meet the needs of the time and consider the current situation.



Let us consider the example of labor migration existing in the member States of the Treaty on the EAEU **3**. Thus, the Eurasian economic Union includes the following States: Russia, the Republic of Belarus, the Republic of Kazakhstan, as well as the Republic of Armenia and the Kyrgyz Republic. This Agreement establishes the freedom of movement of workers in the territory of the Union States. The free movement of labor resources implies the removal of the main restrictions on access to the labour market for citizens of the Union member States.

1 Criminal Code of the Russian Federation of 13.06.1996 № 63-FL (amended from 23.04.2018) // Collection of legislation of the Russian Federation. 1996. 25 №. Article № 2954.

1 Budalin E.P. Migration: problems of legal regulation // Text of the scientific article. Mode of access: <https://cyberleninka.ru/article/n/migratsiya-problemy-pravovogo-regulirovaniya>.

2 Davletgildeev R. Sh., Sycheva O. V. International legal cooperation in the field of labor migration: from the EurAsEC to the Eurasian economic Union // Journal of Russian law. 2015. №. 6. Pp. 143.

Employers can employ citizens of the EAEU without considering existing restrictions on the protection of the internal labour market. Such workers are not required to obtain a patent. In addition, when hiring them, organizations have the right not to consider the existing quotas of the allowable percentage of foreign workers. For citizens of the States parties to the Treaty on the EAEU, there is a grace period for setting workers on migration registration (from seven days, this period for them has been increased to thirty days).

As for all other foreign workers, they can independently dispose of their working abilities, choose work in the relevant profession, enjoy the right to use their own abilities and property for business, subject to the restrictions provided by law.

In our country, the legal regulation of migration processes is being consistently improved, steps are being taken to simplify the documentation of foreign citizens for work. So, today, citizens of the so-called visa countries with which the visa regime operates, must obtain a permit to work. Migrants from visa-free countries (mainly near abroad countries) must obtain a patent.

In its turn, the employer must apply to the Ministry of labour and social protection for the provision of an appropriate quota to obtain a work permission, place vacancies in the bodies of Rostrud (Federal Labour and Employment Service), register with the territorial body of the FMS (Federal Migration Service) of Russia, request permission to attract foreign workers, as well as to issue an invitation to employees, they need to obtain a work visa. This is followed by the issuance of personal permits for individual foreign workers.

As you can see, the procedure is not the easiest. But since the beginning of January 2015, employers have had the right to accept foreign migrants who arrived in the country in a visa-free regime without a work permission. The employee only needs to obtain a social patent to do this, the value of which is set by the relevant subject of the Federation.



The main purpose of these changes was to simplify the procedure for hiring citizens of other States, as well as to give the regions the opportunity to independently regulate the number of migrants arriving by establishing the value of the patent. Regions also have the right to restrict or prohibit the issuance of patents. This innovation greatly facilitated the life and employment of migrants from the near abroad, as well as allowed employers to more freely attract foreign labour to create their facilities.

Citizens of States in the former Soviet Union and citizens of certain foreign countries can enter Russia without a visa, if there is an appropriate international agreement between Russia and these countries. To get a job in a company, a migrant need to specify "work" as the purpose of the visit to the country in his migration card, and then apply for the acquisition of a patent.

Labour legislation does not fully reflect the need for legal regulation of migrant labour. Chapter

50.1 of the Labour Code of the Russian Federation (further – LC of the Russian Federation), which is devoted to peculiarities of regulation of labour of foreign workers and individuals without citizenship, not actually touched upon issues of rights and responsibilities foreign workers **1**. As features at the conclusion of the employment contract with the foreign worker LC of the Russian Federation notes only need of inclusion in the text of the contract of additional information on the worker and need of providing them with additional documents.

¹ Labour Code of the Russian Federation of 30.12.2001 № 197-FL (amended from 05.02.2018) // Collection of legislation of the Russian Federation. 2002. № 1 (part 1). Article 3.

As you can see, the provisions of the Chapter 50.1 are intended to regulate the labour relations of all foreign workers and stateless persons without regard to their status and the order in which they entered the territory of the country. It seems that today more detailed consolidation of legal regulation is required. This Chapter should be supplemented by rules on the basic rules for the conclusion of contracts for the employment of migrants with different legal status.

Another legislative problem, pointed out by T. Y. Korshunova, is the definition of such a concept as the labour activity of a foreign employee **1**. In accordance with the provisions of the Article 2 of the Federal Law "on the legal status of foreign citizens in the Russian Federation", the work of a foreign citizen should be understood as the work of a foreign citizen on the territory of Russia based on an employment or civil contract concluded with him. This definition, the author notes, is generally in line with international requirements and norms, which as a sign of a migrant worker are called paid employment, without specifying the nature of this labour or civil-law activity **2**. But the labour legislation regulates only relations from the labour contract and does not affect other paid activity if that has no signs of labour activity. In this regard, we believe that it is necessary to separate terminologically foreign workers who work in accordance with employment contracts, and workers who perform work or provide services with whom civil contracts are concluded.



It should be agreed that the term "foreign worker" should be used as a broader definition in order to distinguish these concepts. This term covers a variety of cases of employment of foreigners on the territory of our country, including cases of performance of works and services, regardless of what the basis of the legal relationship and what they are. This will prevent confusion in establishing the rights and obligations of certain foreign workers.

In addition, in the labour legislation T. Yu. Korshunova proposes to apply such a concept as a migrant worker, which will be understood as a foreign worker who temporarily arrived on the territory of our country and entered into labor relations with the employer.

The next problem in the area of labour migration, which may affect illegal employment, is related to refugees.

For our country, the problem of forced migration remains open, especially given the recent events in neighboring Ukraine. Forced migrants, like other foreign workers, need work to provide for themselves and their families. Therefore, such migration takes on a labour connotation, because people recognized as refugees, as well as those who apply for refugee status and who have received temporary asylum, are no less in need of appropriate conditions and employment.

Features of legal regulation of labour relations of certain categories of workers: scientific and practical manual / T.

Y. Korshunova, E. G. Azarova, M. A. Bocharnikova, etc.; Rev. ed. Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation, 2015. Pp. 379.

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As you know, refugees have the right to enjoy all the rights of Russian citizens in the field of labor relations (mainly, the right established by article. of the Constitution of Russia **3**), unless otherwise provided by law or international Treaty. Refugees may also be subject to various legal restrictions. According to the provisions of Federal Law № 115-FL of 25.07.2002 "on the legal status of foreign citizens in the Russian Federation", a foreign citizen is not entitled to hold positions in the municipal service **4**. Analyzing the domestic legislation on the status of refugees, we draw a conclusion about the compliance of guarantees for the implementation of their labour rights with generally recognized standards of international law, including the requirements of the Convention on the status of refugees **5**.

Federal Law 4 № 528-1 of 19.02.1993 (amended on 22.12.2014)" on refugees" in the Article 17 established that refugees and persons who apply for recognition as refugees have the right to assist them in finding employment or in obtaining the appropriate direction for training. But neither in this law nor in other Federal Laws there are no rules on the employment of persons with refugee status, and on the procedure for its registration. We believe that such amendments to the law" on refugees " and labor legislation will serve to combat illegal involvement of them in work with reduced compensation.

Some problems of internal migration of workers also deserve attention.



Thus, the law of the Russian Federation of 19.04.1991 "on employment in the Russian Federation 6" has made several changes that came into force at the beginning of 2015 and which after several years are assessed as positive. There are in view addition of the specified law by two articles, namely: article 162.2 "Information and analytical system the all-Russian base of vacancies "Work in Russia" and article 22.2 "Assistance to employers in attraction of labour resources". These articles of the law were aimed at reducing the existing unemployment rate, increasing the level of employment among the population, as well as increasing the level of mobility of the labour force, assisting employers in attracting labour 7.

From our point of view, the changes made are certainly positive. But it should be noted and those issues that need some improvement. On May 5, 2014, the law "on employment in the Russian Federation" was amended. Paragraph 2 of the Article 5, which defines the main directions of the policy of our state in the field of employment, was supplemented by the following direction: creation of appropriate conditions for the work of non-governmental organizations that work to assist citizens in employment and recruitment of workers, including commercial employment agencies, as well as for cooperation and interaction of these organizations with employment agencies.

2 The Constitution of the Russian Federation: adopted by the national Assembly. voting 12 Dec. 1993 // ROS. newspaper. 1993. 25 Dec.

3 On the legal status of foreign citizens in the Russian Federation: Federal law No. 115-FL of 25.07.2002 (amended on 31.12.2017). 2002. № 30. Article 3032.

4 Convention on the status of refugees of 28.07.1951 // Bulletin of international treaties. 1993. №. 9. Pp. 6-28.

5 On refugees: Federal Law № 4528-1 of 19.02.1993 (amended on 22.12.2014) // Vedomosti SND and armed forces of the Russian Federation. 1993. №. 12. 42.

6 About employment of the population in the Russian Federation: the law of the Russian Federation of 19.04.1991 № 1032-1 (in an edition of 07.03.2018) // Collection of the legislation of the Russian Federation. 1996. № 17. P. 1915.

We believe that for such private and public organizations that assist the population in finding work, the ability to search for such work outside the territory of their permanent residence may be higher than that of the territorial bodies of the employment service. Against the background of large volumes of vacancies and many applicants in the absence of proper control over the legality of employment, various violations of the rights of employees, including fair compensation for their work, are possible. Therefore, we believe that such recruitment activities of organizations in search of work should be closely monitored by the state authorities.

Employment agencies with private ownership have certain requirements (they are established by the Article 18.1 of the Law "on employment in the Russian Federation"), but they are not enough to control the activities of agencies in the case of sending their employees to places outside their permanent residence.



The law also does not include the powers to control non-governmental organizations to assist in employment among the control powers of the Federal authorities. We believe that the Article 7 of the said Law should be supplemented by the fact that state bodies in the field of employment have the authority to control non-state recruitment agencies.

Thus, it becomes clear that today there are still no effective mechanisms to combat violations in the field of labor migration. No specific mechanisms have been developed for the interaction of the authorities in the field of employment with law enforcement agencies. Therefore, we believe that the work of any non-governmental organizations that assist in job search and selection of candidates for vacancies, and especially in areas outside the place of residence of employees, should be taken under constant current control by the state with an emphasis on the prevention of labor offenses.

In addition, it should be noted that the employment of workers outside their permanent residence obviously causes several difficulties in law enforcement when trying to control and protect the rights of migrant workers. Moreover, today at the legislative level there is no clear definition of the place of work outside of permanent residence. Some employers provide daily delivery to jobs that can vary. And in such cases, remote areas also cannot be considered located in the place of residence of the employee. Let's consider as an example a situation when at eight-hour working day the appearance of the worker to a place of giving of transport is appointed by the employer some hours before the beginning of the working time. As a result, considering several hours of delivery to the place of work and back, in fact, the employee can take much more time (in some cases up to 12-14 hours a day), which is not considered while paying. Obviously, this does not contribute to the employee receiving fair compensation for his work.

And here the question arises whether long trips to the workplace should be attributed to migration processes? After all, in such cases, workers are forced to travel to work outside their place of residence for quite considerable distances. There is no legislative answer to this question. Meanwhile, it needs to be addressed, as currently migrants lose time, and employers have no incentive to consider and compensate for the time spent by workers. Given that employers solve an important task by creating jobs and solving the issue of attracting labour resources to perform certain works, it is advisable at the state level to consider the possibility of supporting such employers. For example, when employers could receive financial support in the framework of state programs to increase the mobility of labor resources. But in order to resolve these issues, we need, as we have already noted, a single normative act, the content of the norm on all current issues of labor migration.

The following problem is also important. In situations of employment outside the place of residence of employees, there is a high probability of attracting them to work with reduced compensation. Such cases are not uncommon in practice but appeals of employees to the Federal Labour Inspectorate with complaints often do not yield anything, since workers are involved in work illegally and do not have proof of their work. As examples of such situations can serve as the work of sellers and waiters in roadside shops and cafes located far from the place of permanent residence of workers. Internal migrants accept such work because of the high wages offered, and often end up without adequate compensation for their work.



Today, Russia has adopted a package of legislative acts, which in its scope is not inferior to the corresponding similar acts of other States that are active in the field of migration. In fact, we can talk about the existence of a young but independent branch of legislation ¹. The codification of migration legislation will require the improvement of the entire structure of migration management. As a result of the reforms implemented in our country, today migration activities are under the jurisdiction of several Federal authorities. In order to optimize the management of migration processes, all tasks for the organization of this activity should be assigned to the Federal Migration Service. In cases where specific issues of migrants require special knowledge, they should be solved by other state bodies and institutions, but with mandatory control by the FMS of Russia.

One of the achievements of the FMS of Russia in recent years has been the introduction into practice of its work and the work of its territorial bodies of providing services using the electronic document format. However, the FMS must solve a number of tasks to develop work with migrants. In 2012, the President of Russia approved the Concept of the state migration policy of the Russian Federation for the period up to 2025 ², which set new important tasks for the FMS. One of these challenges, if addressed, will contribute to reducing the level of illegal migration. We are talking about the implementation of purposeful work to improve economic and social conditions for migrants, to create favorable conditions for them to adapt to society as soon as possible. In this direction, it is proposed to carry out a number of activities, namely:

- to carry out constant monitoring of migration flows in the country, taking into account illegal migrants as much as possible;
- to establish special adaptation centers in the regions for unemployed foreign migrants, where they could receive temporary housing, referral for training or reorientation in the profession;
- to inform the maximum number of migrants of their rights and obligations, including the use of texts in their national language in newsletters;
- to simplify as much as possible the procedure for obtaining temporary registration and permission for employment by foreign workers;
- introduce a system of benefits for those migrants who work legally, thereby stimulating their lawful behavior.

It seems that it would be effective to pay special attention to interaction with fellow countrymen, national diasporas.

Shuiskaya K. G. Internal labour migration // office Work and personnel. 2015. № 1. Pp. 50.

¹ The concept of the state migration policy of the Russian Federation for the period up to 2025: approved by the President of Russia from 13.06.2012 // reference-legal system GARANT. Mode of access: <http://www.garant.ru/products/ipo/prime/doc/70088244/>.

For a more rational use of the labour force in the regions and for the social adaptation of migrants to their host society, a clear and well-thought-out policy should be pursued not only at the Federal level, but also at the regional level. Currently, an effective independent regional migration policy has not yet been formed.



Since migration processes directly affect society, its role in migration activities can become special. Regional authorities should encourage public initiatives aimed at the establishment and development of various centers and other associations to optimize migration processes and improve the situation of migrants. At a time when the influx of refugees and internally displaced persons is increasing, public assistance in their arrangement (including employment) is necessary.

For example, only in the period from April to August 2014 in Russia entered and remained about 820 thousand Ukrainian citizens. Since the beginning of the conflict, 130 thousand people have applied to the FMS of Russia with a request to provide temporary asylum or to recognize a refugee, more than 78 thousand people have asked for a temporary residence permit, more than 33 thousand-to provide Russian citizenship ¹.

The regional authorities should apply not only civil-law measures for the development of activities in the field of migration, but also other ones. Thus, it is necessary to more actively expand the housing market and credit for its purchase, to create and maintain a single database on vacancies in the region. In our opinion, special attention should be paid to the expansion of the labour market in small cities and towns.

In addition, it is necessary to pay attention to highly qualified foreign workers and to quota places for them, thereby increasing the quality parameters of migration. Training of highly qualified specialists on labour migration issues will contribute to the effectiveness of information and awareness-raising among migrants about their legal status and proper legal behavior.

A separate area of work of regional authorities may be the conduct of explanatory and educational work in order to educate the local population tolerant attitude to migrants.

¹ Andrichenko L. V. Problems of systematization of migration legislation. Journal of Russian Law. 2014. № 12 (216). P. 8.

Conclusions

The main conclusion made as a result of the study, analysis of the regulatory framework, is as follows. In modern conditions, when labour migration has become a global phenomenon, the development and improvement of the regulation of migration flows is a state necessity. Labour migrants help society to solve the necessary production tasks. However, at the same time, their number and the imperfect system of migration activity creates conditions for illegal attraction of them to work with the ensuing consequences in the form of reduced compensation for work, their Commission of offenses, etc.

The main direction of state activity in the field of migration is the improvement of international and domestic legal regulation of labour migration processes. The number of current regulatory legal acts in the field of migration, as well as the presence of a significant number of unresolved migration issues leads us to the fact that it is necessary to develop and adopt a single codified act-the Migration code of the Russian Federation.

Labour legislation also does not fully reflect the need for legal regulation of migrant labour. Chapter 50.1 of the Labour code of the Russian Federation should be supplemented



with provisions on the basic rules for the conclusion of contracts for the employment of migrants with different legal status.

It should also be agreed that the term "foreign worker" should be used as a broader definition to distinguish between these concepts. This will prevent confusion in establishing the rights and obligations of certain foreign workers. In addition, the labour legislation should apply such a concept as a migrant worker, which will be understood as a foreign worker who temporarily arrived on the territory of our country and entered into labor relations with the employer.

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№ 6. Pp. 143 - 153.

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